

# Minnesota Sentencing Guidelines Commission

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## Technical Correction: Obsolete Cross-Reference in Comment 2.D.106

June 8, 2017

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**Issue:** In support of the statement, “The Guidelines do not apply to a stay of adjudication because it is not a conviction,” Comment 2.D.106 cross-references Comment 2.C.10. As Comment 2.C.10 no longer refers to stays of adjudication, should its cross-reference in Comment 2.D.106 be removed as obsolete?

**Guidelines Consideration:** Under Guidelines Section 2.D (“Departures from the Guidelines”), Comment 2.D.106 explains that the imposition of an executed prison sentence upon revocation of a stay of adjudication may constitute a dispositional departure. In that discussion, the comment references Guidelines Section 1.A (“Statement of Purpose and Principles”) and Comment 2.C.10 (commentary that, before 2016, stated that, “[B]ecause a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered.”) In 2016, however, the Legislature eliminated prior statutory stays of adjudication from the definition of “subsequent controlled substance conviction,” and, as a consequence, the Commission deleted references to stays of adjudication from Guidelines Section 2.C.3.c because they were no longer relevant to the presumptive sentence policy. References to stays of adjudication were stricken from the accompanying commentary (Comment 2.C.10) as well, but the cross-reference in Comment 2.D.106 was not removed.

### 2016 Adopted Modifications to Guidelines Section 2.C and Comment 2.C.10:

#### [Section 2]C. Presumptive Sentence

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1. Finding the Presumptive Sentence. The presumptive sentence for a felony conviction is found in the appropriate cell on the applicable Grid located at the intersection of the criminal history score (horizontal axis) and the severity level (vertical axis). \* \* \*

Each cell on the ~~Standard Grid and Sex Offender Grids~~ provides a fixed sentence duration. Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitments. For cells above the solid line, the Guidelines provide both a fixed presumptive duration and a range of time for that sentence except as provided in section 2.C.3.c(1). The shaded areas of the grids do

not display ranges. If the duration for a sentence that is a presumptive commitment is found in a shaded area, the standard range – 15 percent lower and 20 percent higher than the fixed duration displayed – is permissible without departure, provided that the minimum sentence is not less than one year and one day, and the maximum sentence is not more than the statutory maximum. \* \* \*

3. Finding the Presumptive Sentence for Certain Offenses. \* \* \*

c. Controlled Substance Offenses.

(1) Certain First-Degree Offenses. If the current conviction is for controlled substance crime in the first degree and the penalty statute is Minn. Stat. § 152.021, subd. 3(c) (related to sale or possession of at least 100 grams or 500 dosage units of certain controlled substances), or if the current conviction is for aggravated controlled substance crime in the first degree, then the lower range, although displayed on the Drug Offender Grid, is excluded from what would otherwise be the presumptive range for that offense.

(2) Subsequent Controlled Substance Convictions. If the current conviction offense is for a controlled substance crime in the first, or second, ~~or third~~ degree and is a “subsequent controlled substance conviction” as defined in Minn. Stat. § 152.01, subd. 16a, the presumptive disposition is commitment. ~~A stay of adjudication under Minn. Stat. § 152.18 that occurred before August 1, 1999 is not a prior disposition under Minn. Stat. § 152.01, subd. 16a. The prior dispositions listed in Minn. Stat. § 152.01, subd. 16a, trigger~~ Such a conviction triggers the presumptive commitment unless more than ten years have elapsed since discharge from sentence ~~or stay of adjudication~~. The presumptive duration for a controlled substance conviction falling under this section is the ~~fixed~~ duration indicated in the appropriate cell on the Drug Offender Grid, or the mandatory minimum, whichever is longer. \* \* \*

*Comment* \* \* \*

***2.C.10.*** ~~*Because a stay of adjudication is not a felony conviction, the Guidelines do not apply unless and until the stay is vacated and conviction is entered. Minn. Stat. § 152.021, subdivisions 3(c) and 3(d), exclude the lower range, as defined in section 1.B.13.d, from what would otherwise be the presumptive range. While the mandatory-minimum provision of subd. 3(c) may be waived for an offender sentenced for a first-degree possession crime who had not previously been convicted of controlled substance crime*~~

in the first, second, or third degree, a sentence duration that is shorter than the fixed presumptive sentence, even if within the lower range, is nevertheless a mitigated durational departure if subd. 3(c) applies. Under either subdivision, the presumptive disposition is commitment.

**2.C.11.** The special penalty provisions for subsequent controlled substance convictions do not apply to current offenses of aggravated controlled substance crime in the first degree. \* \* \*

**MSGC Staff Recommendation:** Because it is obsolete, strike the reference to Comment 2.C.10 in Comment 2.D.106.

**Commission Decision Point:**

- Shall the Commission give public notice of its intent to strike the reference to Comment 2.C.10 in Comment 2.D.106?

**Illustration:**

**[Section 2]D. Departures from the Guidelines**

\* \* \*

*Comment* \* \* \*

**2.D.106.** *The Guidelines do not apply to a stay of adjudication because it is not a conviction (see Section 1.A and ~~Comment 2.C.10~~). If the initial sentence following felony conviction is commitment to the Commissioner of Corrections, and the Guidelines disposition is a presumptive stayed disposition, it is contrary to the Guidelines presumption. Accordingly, the sentence is an aggravated dispositional departure from the Guidelines, and "revocation of a stay of adjudication" will be noted as the reason for departure, unless the court offers another explanation.* \* \* \*